

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,334

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare reducing her Food Stamp benefits based on an increase in self-employment income. The issue is whether equipment and machinery purchased for use in her business should be treated as a regular expense or as a non-deductible depreciation expense.

FINDINGS OF FACT

1. The petitioner, her husband and their five children are Food Stamp recipients. They own an auto tire repair business from which they made a profit of \$45,043 in 1995. After expense deductions of \$30,257 allowed by the IRS, they reported \$14,786 in net taxable income for 1995.
2. In April of 1996, the petitioner's Food Stamp eligibility was reviewed using figures from the 1995 tax return. A copy of the petitioner's Form 1040, Schedule C and Form 4562 is attached hereto as Exhibit One and incorporated herein by reference. The Department accepted all of the expense deductions claimed by the petitioner on Schedule C ("Profit on Loss from Business") with the exception of \$7,918 from the column entitled "Depreciation and section 179 expense deduction". Adding the \$7,918 back into the net taxable income figure of \$14,786 yielded a yearly countable figure for Food Stamp purposes of \$22,704. That figure was converted to a monthly figure of \$1,892. To that figure was added a second monthly source of income from rental property of \$152.92 for a total countable income of \$2,044.92 per month.
3. On April 23, 1996, the petitioner was notified that her Food Stamp benefit would go down from \$626 per month (based on a prior countable income of \$316.16 per month) to \$175 per month based on the new countable income figure.
4. The petitioner asserts that the Department was wrong to have classified the \$7,918 deduction as "depreciation" instead of deducting it as a regular expense. The petitioner's tax form number 4562, "Depreciation and Amortization", shows that the \$7,918 represents the full costs of business tools

(\$2,437) and a furnace to heat the business (\$5,481) purchased in 1995. The petitioner elected to deduct 100 percent of those costs under Section 179 of the tax code entitled "election to expense certain tangible property". She claims, therefore, that the cost of the business equipment is not being amortized and should not be treated like depreciation.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Department of Social Welfare allow for the deduction of the costs of producing self-employment income as follows:

Allowable Costs of Producing Self-Employment Income

i Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizer, interest paid to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

ii In determining net self-employment income, the following items shall not be allowable as a cost of doing business:

A. Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

B. Net losses from previous periods; and

C. Federal, State and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20-percent earned income deduction specific in 273.9(d)(2); and

D. Depreciation.

F.S.M. 273.11(a)(4)

The Department initially relied on paragraph D. above as the basis for its action. The petitioner argues vigorously that the tools and the furnace are not classified as "depreciation" by the IRS but rather as a regular business expense. The Department now counters that even if the expenditures are not classified as "depreciation" by the IRS, they are still purchases of "equipment, machinery and other durable goods" which are not allowable as a deductible cost of producing income under paragraph A. above.

The tools and furnace purchased for use in the petitioner's business are clearly "equipment and machinery" which are specifically excluded as an allowable expense for producing income under section (ii)(A) of the above Food Stamp regulation. The petitioner does not even attempt to argue otherwise. Given those facts, it is not necessary to determine whether their purchase price falls under the classification of "depreciation".

Although the above restrictions on deductions of expenses can result in an attribution of income to a family which is not actually available to them to use for food purchases, the Board has upheld these restrictions in the past as necessary to prevent the subsidization of business ventures. Fair Hearing No. 7560. The Board noted that allowing the deduction of such expenses (in that case the principal of a loan for business equipment) could result in allowing "virtually any self-employed person to become eligible for public benefits by sufficiently indebting himself to purchase income-producing property". Inasmuch as the department's decision fully comports with the applicable regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 17.

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